that the three railways should purchase jointly land enough in an area reaching from Alameda Street to the river and from Aliso Street to Alhambra Street to erect a suitable Union Station, to be situated somewhere near a square called the Plaza. The railways are directed to make such additions to, extensions of, improvements and changes in the existing railroad facilities of said companies as may be reasonably necessary and incidental to the use of said Union Passenger Station. This would require the removal of the present station of the Southern Pacific from 5th Street toward the Plaza, at least half a mile, and the stations of the Santa Fe and the Salt Lake from 1st Street on the river to the Plaza more than a quarter of a mile. The changes to be effected under the order will require, in the abandonment of the Southern Pacific main track on Alameda Street for three miles, a joint use by the Southern Pacific of main tracks on the river bank with either the Salt Lake or the Santa Fe, or the construction of its own main tracks on one side or the other along the river bank. The main tracks of the Salt Lake must be extended across the Los Angeles River on a viaduct to the area selected for the Union Station. The main track of the Santa Fe runs along the river side of the selected area but an extension of its main tracks will have to be made to bring it into the new station.

The order requires the joint use of land, tracks and terminal facilities valued at $28,050,691; the abandonment of three existing passenger stations of the railways as such, and the ultimate capital expenditure for all recommendations of from $25,000,000 to $45,000,000.

The Railroad Commission in the Supreme Court of the State pressed the argument that, in view of its finding that the Union Station was an indispensable element in getting rid of the grade crossings, it had the incidental right to order its building. The court rejected the argument. It said:

"That notwithstanding the views expressed by the Railroad Commission in its findings and conclusions in the proceeding herein presented for review, we can perceive no indispensable relation between the elimination of grade crossings and the establishment of union depot facilities, nor can we see an unsurmountable difficulty why jurisdiction over the matter of eliminating grade crossings may not be exercised in a proper case consistently, and it may be concurrently, with the exercise of the authority which is vested by the Act of Congress of 1920 in the Interstate Commerce Commission over the subject of union terminal depot facilities."

The State Supreme Court thus modifies the findings of the Railroad Commission in so far as they sought to tie the validity of its order establishing a union station to its unquestioned police power to regulate grade crossings in the interest of the public safety. We avoid any inquiry how far, if at all, the principle laid down in *Erie R. R.* v. *Board of Public Utility Commrs.*, 254 U. S. 394, is qualified by the provisions of the Transportation Act. Our only question here is whether the power to direct a new union station with its essential incidents is committed exclusively to the Interstate Commerce Commission under the Act of 1920.

In *Dayton-Goose Creek Ry. Co.* v. *United States*, 263 U. S. 456, 478, this Court said of the Transportation Act:

"The new act seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country. It aims to give the owners of the railways an opportunity to earn enough to maintain their properties and equipment in such a state of efficiency that they can carry well this burden. To achieve this great purpose, it puts the railroad systems of the country more completely than ever under the fostering guardianship and control of the [Interstate Commerce] Commission, which is to supervise their issue of

securities, their car supply and distribution, their joint use of terminals, their construction of new lines, their abandonment of old lines, and by a proper division of joint rates, and by fixing adequate rates for interstate commerce, and in case of discrimination, for intrastate commerce, to secure a fair return upon the properties of the carriers engaged." *New England Divisions Case*, 261 U. S. 184; *Railroad Commission* v. *Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563.

On the one hand, it is urged that, with the purposes thus declared, the act commits to the supervision and control of the Interstate Commerce Commission such an undertaking as is here in question involving a new capital investment of from twenty-five to forty-five millions of dollars in the terminals of three great interstate railway systems in the largest city of our Western Coast. On the other hand, it is earnestly contended that, since no specific provision is made for the supervision of interstate union stations, by the Interstate Commerce Commission, the whole subject remains in the control of the state Railroad Commissions. We must examine the sections of the act in some detail to determine the force of these counter contentions.

The term railroad is defined in the act, par. 3, § 400, to include all switches, spurs, tracks, terminals and terminal facilities of every kind used or necessary in the transportation of persons or property, including freight depots, yards and grounds used therein. Section 402, after defining the term "car service" under the act as including use, control, distribution, and exchange of locomotives, cars and other vehicles used in interstate transportation, provides for just regulation of it by the Commission, and gives that body power, in case of shortage of equipment or other emergency, to suspend the regulations, to give just directions, without regard to ownership, to promote the service and to adjust proper compensation

for its use, and "to require such joint or common use of terminals, including main-line track or tracks for a reasonable distance outside of such terminals," as in the opinion of the Commission will meet the emergency and the public interest, and upon hearing determine just compensation for use of same. Paragraph 16 authorizes the Commission to provide transportation by other carriers if one carrier is unable to handle its traffic upon terms fixed by the Commission.

By § 405, amended § 3 of the Interstate Commerce Act provides in its third paragraph that all carriers shall afford all reasonable facilities for the interchange of traffic between their respective lines and for forwarding and delivering passengers. Paragraph 4 provides that the Commission may in the public interest and without impairment of a carrier's power to handle its own business with its terminal facilities, require the use of its terminal facilities, including its main-line track or tracks for a reasonable distance outside of its terminal—for another carrier or carriers, upon such terms as may be agreed upon by the parties, fixed by the Commission or determined by suit as in condemnation proceedings.

It is obvious from the foregoing that Congress intended to place under the superintending and fostering direction of the Interstate Commerce Commission all increased facilities in the matter of distribution of cars and equipment and in joint terminals, in the exchange of interstate traffic and passengers between railways so as to make it prompt and continuous. It not only provides for the temporary expropriation of terminals and main track of one railway to the common use of one or more other railways in an emergency, but it also contemplates the compulsory sharing of one company's terminals with one or more companies as a permanent arrangement. This is a drastic limitation of a carrier's control and use of its own property in order to secure convenience and dispatch

for the whole shipping and travelling public in interstate commerce. It gives to the Interstate Commerce Commission the power and duty, where the public interest requires, to make out of what is the passenger and freight station of one interstate carrier, a union station or depot.

But it is insisted that the supervisory power thus conferred does not include the installation of an interstate union station, where its terminals and main tracks are newly built, and the interstate carriers are compelled to expropriate, not the terminal property of another interstate carrier, but property of others than carriers not theretofore used for terminals. This would be giving power to the Interstate Commerce Commission to provide for a small and contracted union station of interstate carriers limited to the terminals of one carrier, and would leave the larger and more important union stations of interstate carriers to the control of state commissions. We think, however, that means of control over installation of such new union stations for interstate carriers is given to the Interstate Commerce Commission in amended paragraphs (18 to 21) of § 402. They provide that no interstate carrier shall undertake the extension of its line of railroad or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation over such additional or extended line of railroad, unless and until the Commission shall certify that public convenience present or future requires it, and that no carrier shall abandon all or any portion of its line or the operation of it without a similar certificate of approval. Such a certificate is, we think, necessary in the construction of a new interstate union station which involves a substantial and expensive extension of the main tracks or lines of interstate carriers who theretofore have maintained separate terminals.

It is argued that paragraphs 18 to 21, of § 402, refer only to extensions of a line of railroad having the

purpose to include new territory to be served by the interstate carrier and do not refer to an extension of new main track for the mere purpose of rearranging terminals within the same city. We do not think the language of paragraphs 18 to 21 can be properly so limited. We are confirmed in this by paragraph number twenty-two which immediately follows:

"The authority of the Commission conferred by paragraphs (18) to (21), both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching or side tracks, located or to be located wholly within one State, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation."

This is a palpable distinction between the main tracks of an interstate carrier, and its spur, industrial, switching or side tracks, and shows the legislative intention to retain any substantial change in the main tracks within the control of the Interstate Commerce Commission. It may well be that a mere relocation of a main track of an interstate carrier which does not involve a real addition to, or abandonment of, main tracks and terminals, or a substantial change in destination, does not come within the paragraphs 18 to 21. One might, too, readily conceive of railroad crossings or connections of interstate carriers in which the exercise by a state commission of the power to direct the construction of merely local union stations or terminals without extensions of main tracks and substantial capital outlay should be regarded as an ordinary exercise of the police power of the State for the public convenience and would not trench upon the power and supervision of the Interstate Commerce Commission in securing proper regulation of an interchange of interstate traffic or passengers. Only a lawful order of the Interstate Commerce Commission would raise a question of the power of

a state commission in such cases, as the proviso of paragraph 17, § 402 of the Transportation Act shows:

"That nothing in this Act shall impair or affect the right of a State, in the exercise of its police power, to require just and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this Act."

But there is a great difference between such relocation of tracks or local union stations and what is proposed here. The differences are more than that of mere degree; they and their consequences are so marked as to constitute a change in kind. They come within paragraphs 18 to 21 of § 402 and require a certificate of the Interstate Commerce Commission as a condition precedent to the validity of any action by the carriers or of any order by the State Commission.

The proviso of paragraph 21 of § 402 is significant of the distinction we are pointing out. It forbids the Commission to authorize or order the extension of its lines "unless the Commission finds, as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension . . . that the expense involved therein will not impair the ability of the carrier to perform its duty to the public."

The extensions of the lines and main tracks of these railways under the plan which the State Commission has ordered are not great in distance, but they involve a new intramural destination for each railway with important changes in the handling of interstate traffic and passengers. Great expense attends such changes of the main tracks in a crowded city, and they here carry with them as necessarily incident thereto, the abandonment of available sites and of valuable existing passenger and freight stations and the construction of a new union station elsewhere, imposing on the three railways a cost in making

the changes of from twenty-five millions to forty-five millions of dollars. We think it clear that in such an extension of main lines with their terminals the Interstate Commerce Commission is required by the act to make a finding that the expense involved will not impair the ability of the carriers concerned to perform their duty to the public.

The purpose of Congress to prevent interstate carriers from incurring expense which will lessen their ability to perform well their interstate functions is further shown in § 439 of the Transportation Act, whereby the Interstate Commerce Act is amended by insertion of § 20a. This new section subjects to the approval or rejection of the Interstate Commerce Commission the issue by an interstate carrier of all future shares of stock, bonds or other evidence of indebtedness and forbids approval unless the Commission shall find that their issue is for a lawful purpose, is compatible with the public interest, is appropriate and necessary to the discharge of its public duty as a common carrier and will not impair its ability to perform that service. This is of course *in pari materia* with the restriction of paragraph 21 of § 402 to prevent a possible impairment of the financial ability of interstate carriers to discharge their interstate commerce duties. Such a heavy burden as that involved in this new union station and the main track changes and extensions and other accessories would in all probability require the three railways to issue new capital securities and this could not be done without the approval of the Interstate Commerce Commission. To be sure this provision only becomes operative when securities have to be issued and would not, of itself, prevent action by a state commission until such securities are seen to be necessary; but the provision indicates the general congressional plan.

We were advised by statements at the bar that, after the California Supreme Court handed down its decision in this case, the City of Los Angeles filed a petition with

the Interstate Commerce Commission asking for an order to provide, maintain and use a union station; that a hearing followed and that, pending the decision in this Court, the matter is held under consideration.

For the reasons given, we think the course taken by the City of Los Angeles was the correct one. Until the Interstate Commerce Commission shall have acted under paragraphs 18 to 21 of § 402 of the Transportation Act, the respondent railways can not be required to provide a new interstate union station and to extend their main tracks thereto as ordered by the State Railroad Commission.

The judgment of the Supreme Court of California is

Affirmed.